IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

THE STATE OF MISSOURI, COMPLAINANT, v. THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, RESPONDENTS.	*In Equity. Original. No. 4.*

MOTION TO DISMISS.

Come the said respondents by their solicitors, H. J. Hamlin, Attorney General of the State of Illinois, in behalf of the State, and James Todd, John G. Drennan, and William M. Springer, in behalf of the Sanitary District of Chicago, and move this Honorable Court to dismiss said cause for want of prosecution, and for the reasons therefor, they state:

First. Because it appears from the record of this court that the bill of complaint was filed herein January 22, 1900, nearly two years ago; that proof of service of subpœnas was filed January 29, 1900; that the demurrer to bill was argued November 12 and 13, 1900; that the de-

murrer was overruled January 28, 1901, and separate answers filed by respondents on the same day; that a supplemental bill was filed May 13, 1901; that demurrer was filed to the 4th paragraph of the supplemental bill and answer to the other parts of said bill May 13, 1901; that on the same day a replication was filed to the answers to the supplemental bill; and that on May 27, 1901, the demurrer to the 4th paragraph of the supplemental bill was sustained by the court.

Second. Because since May 27, 1901, when the issues were by the pleadings joined for trial, an entire term of this court has elapsed and no effort has been made by the complainant to further prosecute said cause or to sustain its said bill of complaint by testimony of any kind.

Third. Because the burden of proof is on the complainant to establish by competent evidence the allegations in its bill, which it has wholly failed to do.

Fourth. Because the pending of said cause is a constant menace to respondents and has a tendency to create doubt and mistrust as to the utility and success of the great Sanitary Canal which they have constructed, and necessarily retards the improvement of the same.

Fifth. Because respondent, the Sanitary District of Chicago, has been subjected to great expense in the preparation for a trial of said cause, and such expense must continue until it is definitely determined whether there is to be a trial of the issues of fact in said cause.

Respectfully submitted.

H. J. HAMLIN,
Attorney General of Illinois.
JAMES TODD,
JOHN G. DRENNAN,
WILLIAM M. SPRINGER,
Solicitors for Respondents.

To Hon. EDWARD C. CROW,
Attorney General of Missouri.
B. SCHNURMACHER, Esq.,
Attorneys of record for the
Complainant in the above-entitled cause.

You are hereby notified that the respondents in the above-entitled cause will, on the tenth day of November, A. D. 1902, on the meeting of the Supreme Court of the United States, on that day, or as soon thereafter as counsel can be heard, submit for the consideration of the court, the foregoing motion and the brief thereon hereto attached.

H. J. HAMLIN,
Attorney General of Illinois.
JAMES TODD,
JOHN G. DRENNAN,
WILLIAM M. SPRINGER,
Solicitors for Respondents.

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BRIEF OF RESPONDENTS IN SUPPORT OF MOTION TO DISMISS.

I.

The failure or refusal of the plaintiff to prosecute his suit within a reasonable time will authorize its termination by the court in which it is brought, upon the motion of the defendant and against the will of the plaintiff.

6 Encyc. of P. and P., page 904.

II.

The rule applies to every kind of civil proceedings, whether in law or in equity.

A Bill in Chancery may be dismissed upon the unexplained default of plaintiff in proceeding further with the cause within a reasonable time.

Id. page 905, and note 3, citing numerous authorities in Illinois, Kentucky, Massachusetts, Michigan, Missouri, Mississippi, New Jersey, North Carolina, and Virginia. Also numerous English cases.

III.

Where plaintiff failed after issues joined to move for commission to examine witnesses, defendant was entitled to a dismissal.

Id. page 906, and note 4, citing Carden *v.* Manning, 1 Keen, 380.

IV.

At common law a plaintiff may be nonsuited for want of prosecution.

Id. page 907, and note 4, citing numerous authorities in Arkansas, California, Illinois, Kentucky, New York, and in England.

V.

The complainant may be dismissed for failure of the plaintiff to proceed with the cause after issue joined.

Id. page 910, and note 1, citing Winchell *v.* Martin, 14 Abb. Pr. N. S. (N. Y. Supreme Court) 47; McCarmick *v.* Miller, 19 Minn. 443.

VI.

"Three months and no more shall be allowed for taking of testimony after the cause is at issue, unless the court or judge thereof shall, upon special cause shown by either

party, enlarge the time; and no testimony taken after such period shall be allowed to be read in evidence at the hearing."

Rule 69 of "Rules of Practice for the Equity Courts of the United States."

2 Desty's Federal Procedure, page 1183.

The three months allowed is for taking testimony of both plaintiff and defendant.

Ingle *v.* Jones, 9 Wall. 486.

VII.

The bill of complaint in the case at bar was filed in this Court January 22, 1900, nearly two years ago, and the issues were joined May 27, 1901.

Since that time an entire term of this Court has intervened, and no effort has been made by the complainant to further prosecute said cause or to sustain its said bill of complaint by testimony of any kind.

VIII.

Counsel for respondents respectfully insist, in view of the facts of record and the law applicable thereto, that their motion to dismiss for want of prosecution should be allowed, and that respondents may go hence with their reasonable costs in this behalf expended.

H. J. HAMLIN,
Attorney-General of Illinois.
JAMES TODD,
JOHN G. DRENNAN,
WILLIAM M. SPRINGER,
Solicitors for Respondents.